

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

Vilma Gonzalez,

Plaintiff,

v.

Civ. Action No. 09-4140 (KSH)

Michael Astrue, Commissioner of Social
Security

Defendants.

OPINION AND ORDER

KATHARINE S. HAYDEN, U.S.D.J.

On the application by plaintiff for attorney's fees pursuant to the Equal Access to Justice Act (EAJA), the Court finds as follows:

1. Plaintiff seeks an award of \$10,001.76 for attorney's fees.
2. Defendant Commissioner does not challenge the reasonableness of the fees. Rather, defendant claims that the Commissioner's decision was substantially justified and as a result, the petition for attorney's fees under the EAJA should be denied.
3. The record reflects that one of the medical opinions the Commissioner relied on had attached to it five pages that referred to someone other than plaintiff, requiring a remand.
4. This unusual turn of events was a focal point of the Court's decision.
5. As well, the Court observed that the case was "close."
6. Notwithstanding, the requirement that the ALJ's RFC finding be reviewed is a logical and necessary response to the anomaly in the record that serves the interests of justice. The Court is not persuaded that defendant Commissioner's finding of Not Disabled was justified.
7. Additionally, the Court is unaware of legal authority, nor has the Commissioner provided any, that would withhold legal fees from a plaintiff who sought and obtained a remand because indisputably flawed evidence was utilized in conjunction with a finding of Not Disabled.

Good cause appearing,

It is on this 28th day of September, 2010,

ORDERED that the plaintiff's attorney, Legal Services of New Jersey, is awarded attorney's fees under the Equal Access to Justice Act in the amount of \$10,001.76.

/s/ Katharine S. Hayden

KATHARINE S. HAYDEN, U.S.D.J.